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OFFICE OF PETITIONS

In re Application of :
Zhang et al. :
Application No. 10/730,235 :
Filed: December 8, 2003 :
Attorney Docket No. SHEL.105812/TH2389 :

ON PETITION

This is a decision on the petition under 37 CFR §§ 1.78(a)(6), filed October 28, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 119(e) for the benefit of prior-filed provisional Application No. 60/431,360, filed on December 6, 2002, as set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR §§ 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR §§ 1.78(a)(6), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the above-noted, prior-filed provisional application.

The instant pending nonprovisional application was filed on December 8, 2003, and was pending at the time of filing of the instant petition. While a reference to the above-noted, prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter filed with the above-identified application.

The reference may also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application without penalty. On March 15, 2004, petitioner timely submitted a Preliminary Amendment, which incorporated the priority claim to the above-noted, prior-filed provisional application. A corrected Filing Receipt, which included the priority claim, was mailed to the address of record on May 18, 2004.

In view of the above, the \$130.00 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Paralegal Liana Chase at (571) 272-3206. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the Examiner of Technology Center AU 3672 for appropriate action on the amendment filed March 15, 2004, including consideration of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for benefit of prior-filed provisional Application No. 60/431,360.

A handwritten signature in cursive script that reads "Frances Hicks".

Frances Hicks

Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner
for Patent Examination Policy